IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 445 of 2004

WITH

TAX APPEAL NO. 446 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
HON'BLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANTILAL MEGHRAJ SHANTILAL MEGHRAJ (AOP) - Appellant(s)

Versus

I.T. OFFICER - Opponent(s)

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Appearance :

MR JP SHAH for the appellant

MR MANISH R BHATT for Respondent

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CORAM : HON'BLE MR.JUSTICE D.A.MEHTA

and

HON'BLE MS.JUSTICE H.N.DEVANI

Date : 02/08/2005

ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. These appeals pertain to assessment years 1983-84 and 1984-85. The case of the appellants is that they are trustees of one Shah Meghraj Hansraj Family Trust and have wrongly been assessed in the status of Association of Persons (AOP).

2. Heard learned counsel for the parties. **ADMIT**.

3. As can be seen from the record, the trust was assessed on a protective basis for the same assessment years, while the appellant herein was assessed on a substantive basis. The trust succeeded before the CIT (Appeals), who deleted the protective addition in hands of the trust, against which neither the revenue nor the assessee had originally preferred appeal before the Tribunal. Taking cognizance of this position, the Tribunal, in its order dated 30-1-2004, has confirmed substantive addition in

hands of the appellant.

4. Mr.J.P.Shah, the learned advocate for the appellant has informed that the trust has preferred appeals and the said appeals are registered as ITA No.1870 and 1871/Ahd/2005. It is required to be stated that when the present appeals came up for hearing on 11th July 2005, the Court had directed the appellant to inform the Trustees to prefer appeals against the order of CIT (Appeals) quashing the protective assessment in hands of the trust.

5. In these circumstances, the following substantial question of law would arise for determination :

> "Whether, on the facts and in the circumstances of the case, the CIT (Appeals) and the Tribunal ought to have heard the appeals of both the trust and the appellant together considering the fact that, for the same assessment years, assessment in the hands of the trust had been made on protective basis, while assessment had been made on a substantive basis in hands of the appellant ?"

6. By consent of both the learned counsel appearing for the respective parties, the appeals are taken up for hearing and final disposal today.

7. Needless to state that the Tribunal could not have proceeded to decide the appeals of the appellant without dealing with appeals of the trust. In case the challenge of the appellant in the present appeals succeeds, the revenue would be affected as both protective and substantive assessments would get knocked off. In these circumstances, without rendering any opinion on merits of the controversy between the parties, it would be in the fitness of things if the present appeals are restored to the file of the Tribunal for hearing them together with the appeals filed by the trust. The question stands answered accordingly.

8. Accordingly, it is directed that the present appeals are allowed for statistical purposes and stand restored to the file of the Tribunal. The Tribunal shall hear these two appeals along with the appeals filed by the trust being ITA Nos.1870 and 1871/Ahd/2005. It is informed at the bar the appeals of the trust are coming up for hearing on 3-10-2005. The Tribunal shall link up all the four appeals and hear them on any one day according to its own convenience.

9. Both the appeals stand disposed of accordingly. There shall be no order as to costs.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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